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From: Boucher, Aimee
Sent: Monday, June 18, 2018 2:00 PM
To: Fagel, Jason R (DEC) (jason.fagel@dec.ny.gov); Sarah Rickard (sarah.rickard@dec.ny.gov)
Subject: Clarification on WQS and listing

Hi Jason,

Great to see you last week – I hope you had a productive HEP meeting and safe travels back. Following up from our meeting, I wanted to provide the statutory and regulatory citations and language, and clarify EPA’s interpretation of the statutory and regulatory language in regards to the requirement for state to list a water on its 303(d) list when any applicable water quality standard is not met (emphasis added).

CWA 303(d)(1)(A) – Each State shall identify those waters within its boundaries for which the effluent limitations required by section 1311(b)(1)(A) and section 1311(b)(1)(B) of this title are not stringent enough to implement **any water quality standard applicable to such waters**. The State shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.

40 CFR 130.7(b) Identification and priority setting for water quality-limited segments still requiring TMDLs.

(1) Each State shall identify those water quality-limited segments still requiring TMDLs within its boundaries within its boundaries for which:

- (i) Technology-based effluent limitations required by sections 301(b), 306, 307, or other sections of the Act;
- (ii) More stringent effluent limitations (including prohibitions) required by either State or local authority preserved by section 510 of the Act, or Federal authority (law, regulation, or treaty); and
- (iii) Other pollution requirements (e.g., best management practices) required by local, State, or federal authority are not stringent enough to implement **any water quality standards (WQS) applicable to such waters**.

...

(3) For the purpose of listing waters under 130.7(b), the term “water quality standard applicable to such waters” and “applicable water quality standards” refer to those water quality standards established under section 303 of the Act **including numeric criteria, narrative criteria, waterbody uses, and antidegradation requirements**.

40 CFR 131.11: Criteria

40 CFR 131.11(a) – Inclusion of pollutants: (1) States must adopt those **water quality criteria that protect the designated use**. Such criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to **protect the designated use**. For water waters with multiple designations, **the criteria shall support the most sensitive use**.

To reiterate, if **any** applicable water quality standard (including numeric criterion, narrative criterion, waterbody use, and antidegradation requirement) is not met, the water must be listed. Furthermore, because criteria must be established at a level to protect the designated use of a water, if data indicate that an applicable criterion is not met, the use is not protected.

Hope this provides some clarity. Thanks!
Aimee

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